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NOTES.

CARRIERS—LOSS OF GOODS—NO DECLARATION OF VALUE—The rule that a common carrier may not relieve itself by contract from liability for loss or damage to goods due to its negligence is now generally accepted,[1] yet even with the courts professing to follow it there is a tendency to limit recovery against the carrier to the amount agreed upon between the carrier and the shipper as the value of the shipment, though loss occurs through the carrier's negligence.[2]

A recent case in the Supreme Court of Oklahoma[3] raises the question of the validity of contracts limiting liability for negligence. An express company accepted a trunk for transportation from a point in one state to a point in another, with notice from the shipper of the value of the contents, without requiring a written declaration of value and without issuing a receipt limiting the valuation of the

[1] Armstrong v. U. S. Express Co., 159 Pa. 640 (1894); Pierce v. Southern Pac. Co., 120 Cal. 156 (1898).

[2] Richmond v. Payne, 86 Va. 481 (1890); Smith v. American Express Co., 108 Mich. 572 (1895); Ulhman v. C. T. N. W. R. Co., 112 Wis. 150 (1902).

property in case of failure to deliver. The court held that the shipper was entitled to recover the reasonable value of the property lost.

The court said: "From the fact that the company had a tariff of rates approved by the Interstate Commerce Commission, notice of which was posted in its office, the law did not imply a contract of shipment at the minimum rate and at a released valuation. . . . The approved tariff authorized the company to enter into a contract of shipment by which its liability might be limited to the express valuation named in the contract of shipment, but when the company accepted the trunk for shipment, with notice from the shipper of the value of its contents and did not require an express declaration of value, then the law made a contract for the parties whereby the obligation was imposed upon the company to safely deliver the property within a reasonable time and placed the obligation on the shipper to pay the tariff rate according to the value of the property shipped."

It is clear that if a shipper requests and receives a certain service, he is bound thereby to pay the rate scheduled for that service, regardless of his knowledge of the rate or of any inconsistent contract made by the carrier with him.[4] It is usually said that the shipper has notice of the appropriate rate by reason of its being on file with the Commission. As a matter of fact, the shipper in such a case has no notice of any kind, but in order to insure that every shipper receiving the same service shall pay the same rate, and so prevent discrimination, the law binds each to pay the legal rate, regardless of notice or lack of notice.[5] Taking literally this misleading phrase, "presumed to have notice", it may seem logical to say if a shipper has notice of a rate by the filing of it, he also has notice of the grade of service, a limitation clause or what might be called an offer for a valuation agreement, provided that is filed. And so the Supreme Court of the United States in *Boston & Maine Railroad* v. *Hooker*[6] held that because the carrier has filed a regulation with the Interstate Commerce Commission as to how the agreed value shall be reached, the shipper is affected with constructive notice of the regulation and that therefore where he fails to declare a greater value he can be said to have agreed or represented that the goods are worth only a limited amount. And further, if this regulation as to the manner of valuation is unreasonable, the court holds that it cannot be declared invalid in a collateral proceeding, but must be directly attacked before the Interstate Commerce Commission.[7]

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[3] American Express Co. v. Merten, 141 Pac. Rep. 1169 (Okl. 1914).

[4] Gulf, Colorado, *etc.*, Ry. v. Hefly, 158 U. S. 98 (1895); Texas & Pacific Ry. v. Mugg, 202 U. S. 242 (1905).

[5] Chicago & Alton R. Co. v. Kirby, 225 U. S. 155 (1911).

[6] Boston & Maine Ry. v. Hooker, 34 Sup. Ct. Rep. 526 (1914).

[7] T. & P. Ry. Co. v. Abilene Cotton Oil Company, 204 U. S. 426 (1906); Clement v. T. & N. R. Co., 153 Fed. Rep. 979 (1907).

The issue then is what kind of service did the shipper receive. Since legally the only type of service is one with unlimited liability unless an agreement or statement of valuation is made by the shipper, he cannot be said to have requested,[8] or in fact to be entitled to limited service without the creation through constructive notice of an act on his part. Such a result as was reached in the Hooker case[9] is a radical and unjust extension of the doctrine. If followed out logically, it would allow common carriers to make use of an advantageous position to overreach their patrons. They might discard their present lengthy bills of lading, issue simple receipts and still bind the shipper without his knowledge by the mere filing of regulations with the Commission.

It is a settled rule that the normal shipment is with liability for the entire value of the goods.[10] Carriage with limited liability, is an exceptional service which exists only when the shipper by shipping on a certain agreed or represented valuation has estopped himself to assert a greater value. This point was decided in the case of *Hart* v. *Pennsylvania R. R.*[11] and has subsequently been followed in many jurisdictions.[12] And, it now represents the prevailing view. Nevertheless, in a few states, its soundness is questioned and a contrary rule established.[13]

The result of the Hart case[14] is to relieve the carrier from obligation to pay to the shipper the full value of the goods and that too, though the loss has happened through the carrier's negligence. Since the general rule forbidding the limitation of liability for negligence is well established, it is important to seek the reason for this conclusion. The Hart case and others in accord with it suggest estoppel as the foundation upon which they may be rested.[15] It is clear that where the shipper to secure a lower rate misrepresents the value and the carrier is misled by such misrepresentation, and loss occurs in consequence of the lower valuation, a case is presented to which the principle of estoppel applies. In the Hart case the carrier knew the true value of the goods shipped. Some cases, however, disclose

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[8] "There can be no limitation of liability without the assent of the shipper." Can. v. Texas & Pacific Ry. Co., 194 U. S. 42 (1903).

[9] Boston & Maine Ry. v. Hooker, *supra,* n. 6.

[10] The Majestic, 166 U. S. 375 (1896).

[11] Hart v. Pennsylvania R. R., 112 U. S. 375 (1896).

[12] Duntley v. Boston & Me., 66 N. H. 263 (1890); Smith v. American Express Co., 108 Mich. 572 (1896); Loeser v. Chicago, *etc.,* R. Co., 94 Wis. 571 (1896); Graves v. Adams Express Co., 176 Mass. 280 (1900); Georgia Southern Ry. Co. v. Johnson, 121 Ga. 231 (1904).

[13] Baughman v. Louisville R. R., 94 Ky. 150 (1893); Hughes v. P. R. R. Co., 202 Pa. 222 (1902).

[14] Hart v. Pa. R. R. Co., *supra,* n. 11.

[15] Hart v. Pa. R. R. Co., *supra,* n. 11; Graves v. Lake Shore R. R., 131 Mass. 33 (1881); Georgia Ry. Co. v. Johnson, *supra,* n. 13.

all these facts and are properly rested on estoppel.[16] Since estoppel arises only where there is a misrepresentation, it would seem that it can play no proper part when the carrier knows the true value of the goods shipped and is consequently not misled by the shipper's valuation. Estoppel, therefore, has a proper place only where the carrier does not know that the true value is misstated.

If the estoppel theory is unsound, the reason can apparently be rested only on the basis of contract. Here, again, if the carrier knows the true value of the goods shipped, it is not easy to understand on what theory to support the conclusion reached in the cases. Since the carrier and the shipper are both aware of the true value of the goods shipped, the placing of a lower valuation thereon is a patent effort to absolve the carrier from a portion of his liability. The courts agree that where the stipulation is in form a limitation of liability to a specified amount, such limitation will not be upheld in cases of negligence and why a different result should be reached because the parties with full knowledge of the facts decide upon an agreed valuation is one for which we cannot give a reason.

It is true that the cases have not turned on the question of the carrier's knowledge or ignorance of the true value.[17] Such ignorance or knowledge on the part of the carrier of the true value of the goods should constitute we believe, the decisive factor in determining the validity or invalidity of a stipulation as to agreed valuation where the loss occurs through negligence. The carrier's duty should be to ship only at the true value, where known, since attempted limitation of liability to a fixed sum is not permissible. If the courts sustain contracts of this kind entered into with full knowledge on both sides of the true value, simply because they take the form of agreed valuation, an important exception has developed to the general rule forbidding contracts by common carriers limiting liability for negligence.

Clearly, as a mode of protecting the carriers against false valuations and of liquidating the damages in advance, an agreed valuation commends itself to everyone. Since value is a matter of opinion where such agreed value is reasonably close to the true value, courts might hold the spirit of the rule forbidding limitation of liability for negligence is not violated by upholding such agreed valuation. Accordingly some cases have made the validity of the valuation depend solely on its approximating with reasonable accuracy the true value of the goods.[18]

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[16] Everett v. Southern Express Co., 46 Ga. 303 (1872); Oppenheimer v. U. S. Express Co., 69 Ill. 62 (1873).

[17] Reference thereto has frequently been made. Southern Express Co. v. Everett, 37 Ga. 688 (1868); Baughman v. Louisville R. R., 94 Ky. 150 (1893). In some cases it has been distinctly repudiated as an essential element. Douglas Co. v. Minn. Transfer Ry. Co., 62 Minn. 281 (1895), where the decision is made to turn on the fairness of the valuation.

[18] Murphy v. Wells, Fargo & Co., 108 N. W. Rep. 1070 (Minn. 1904); Nashville Ry. Co. v. Heikens, 79 S. W. Rep. 103 (Tenn. 1904).

The further question arises as to whether the provision of the Carmack Amendment to the Interstate Commerce Act[19] has the effect of changing the rule laid down in the Hart case.[20] The cases hold very generally, however, that the Carmack Amendment does not deprive the carrier of the right to make a fair contract with the shipper, fixing an agreed valuation upon the goods to be transported.[21]

G. W. K.

CORPORATIONS—POWER TO ACT AS ACCOMMODATING INDORSER—In Pennsylvania, for the first time, the precise question whether a corporation will be liable on its endorsement of a promissory note when such endorsement was for accommodation, and the paper passes into the hands of a *bona fide* purchaser for value before maturity without notice of the character of the endorsement, has been passed on by the Supreme Court, and decided in the affirmative. The Court took the position that a corporation having either express or implied power to issue negotiable paper is presumed to act within the scope of that authority and that therefore there was nothing to put the holder on notice that the endorsement was irregular, and consequently he is entitled to recover.[1]

The first question to be considered is when the power to issue negotiable paper may be implied, and on this point there is an interesting difference of judicial opinion between the courts of England and those of the United States, the latter being far more lenient. In England a corporation has not, as one of the mere incidents of its existence, the power to make notes, accept bills of exchange, *etc.* The rule is that unless the nature of the business in which a corporation is engaged raises a necessary implication of the existence of such a power, it does not exist, and it seems that a corporation whose business does not require the issuing of negotiable paper under ordinary circumstances has no implied authority to issue such a paper under any circumstances whatever. The reason for the rule as stated by Chief Justice Erle in *Bateman* v. *Mid Wales Railway Company*[2] is this: "The bill of exchange is a cause of action by itself, which binds the acceptor in the hands of any endorsee for value; and I conceive it would be altogether contrary to the principles of the law which regulates such instruments that they should be valid or invalid according as the original consideration between the parties was good or bad,—or whether in the case of a corporation,

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[19] Act of Feb. 4, 1887, c. 104, §20, 24 Stat. 386, U. S. Comp. St. 1901, as amended by Act of June 29, 1906, c. 3591, §7, 34 Stat. 593, U. S. Comp. St. Supp. 1911.

[20] Hart v. Penna. R. R., *supra,* n. 11.

[21] Albert Bernard v. Adams Express Co., 205 Mass. 254 (1910); Adams Express Co. v. Croninger, 226 U. S. 491 (1912).

[1] Cox and Sons Co. v. Northampton Banking Co., 245 Pa. 418 (1914).

[2] L. R. 1 C. P. 499 (Eng. 1866).